

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1194

SPONSOR: Transportation Committee and Senator Wise

SUBJECT: Commercial vehicle traffic

DATE: March 23, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper/Perrin</u>	<u>Yeatman</u>	<u>CP</u>	<u>Favorable</u>
2.	<u>Davis</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/CS</u>
3.	_____	_____	<u>FT</u>	_____
4.	_____	_____	<u>ATD</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	<u>RC</u>	_____

I. Summary:

Chapter 316, F.S., provides for uniform traffic regulations throughout the state related to speed limits, street signage, traffic signals, and penalties for violators of traffic laws. Pursuant to s. 316.006, F.S., the Florida Department of Transportation (FDOT) has jurisdiction over all state roads; municipalities have jurisdiction over all streets and highways within their boundaries, except for state roads; and counties have jurisdiction over all streets and highways within their boundaries, except for state and municipal roads. No city or county shall enact an ordinance on a traffic-related matter covered by chapter 316, F.S., unless expressly authorized by the Legislature. Section 316.008, F.S., does list several examples of additional traffic fines or signage which local governments can impose.

This CS reaffirms state intent that municipalities may grant permits, licenses, or franchises, or may otherwise regulate, sightseeing operations on public rights-of-way within their jurisdictions. The CS also specifies neither a municipality, nor the entities to which it has granted permits, licenses, or franchises, bear any liability under ch. 542, F.S., for the municipality's decision to regulate sightseeing activities.

This CS amends section 316.006 of the Florida Statutes.

II. Present Situation:

Chapter 316, F.S., provides for uniform traffic laws throughout the state. Specific sections of law within the chapter discuss the authority of counties and municipalities to regulate and restrict traffic on locally owned and maintained roads. Local governments are able to regulate only one activity on state and federal highways – processions or assemblages – pursuant to s. 316.008(1)(c), F.S.

As for municipal roads, chapter 316, F.S., gives local governments broad latitude for regulation. For example, s. 316.002, F.S., states:

“The Legislature recognizes that there are conditions which require municipalities to pass certain other traffic ordinances in regulation of municipal traffic that are not required to regulate the movement of traffic outside of such municipalities.”

Section 316.006(2), F.S., grants municipalities “original jurisdiction over all streets and highways located within their boundaries, except state roads...” This jurisdiction includes private roads and limited-access roads owned or controlled by special districts, if those entities enter into a written agreement with a municipality to allow municipal control.

Section 316.008, F.S., states that local authorities are authorized “with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power...” to regulate 13 activities or aspects of roads and highways, including among other things:

- (a) Regulate or prohibit stopping, standing, or parking;
- (g) Restrict the use of streets; and
- (n) Prohibit or regulate the use of heavily traveled streets by any class or kind of traffic found to be incompatible with the normal and safe movement of traffic.

Prior to its 1973 repeal, s. 167.01, F.S., provided, in relevant part, that cities were authorized to regulate streets, lands and avenues. The repealing statute, s. 166.042, F.S., contains a savings clause that specifically provides municipalities the authority to continue to exercise the regulatory power granted to them pursuant to the repealed s. 167.01, F.S.

Counties currently have explicit authority over the regulation and restriction of certain commercial vehicle traffic. Section 125.01(1)(n), F.S., provides, to the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to:

“License and regulate taxis, jitneys, limousines for hire, rental cars, and other passenger vehicles for hire that operate in the unincorporated areas of the county...”

III. Effect of Proposed Changes:

Section 1 of this CS amends s. 316.006, F.S., to reaffirm state intent that municipalities may grant permits, licenses, or franchises, or may otherwise regulate, sightseeing operations on public rights-of-way within their jurisdictions. The CS also specifies neither a municipality, nor the entities to which it has granted permits, licenses, or franchises, bear any liability under ch. 542, F.S., for the municipality’s decision to regulate sightseeing activities.

Section 2 provides that the CS will become effective upon becoming a law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

Consistent with a recent ruling by a circuit court, this CS clarifies the authority of local governments to charge fees for commercial vehicle permits, franchises and licenses associated with the regulation of sightseeing operations on public rights-of-way within their jurisdictions.

B. Private Sector Impact:

Consistent with a recent ruling by a circuit court and current practice by municipalities, privately owned sightseeing companies may be charged fees by municipalities for commercial vehicle permits, franchises and licenses.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In a recent circuit court case,¹ a municipality's authority to enact franchise ordinances granting exclusive contracts for sightseeing tours within its jurisdiction was challenged and upheld. The Plaintiff argued that there existed no "clearly articulated or affirmatively expressed policy of the State of Florida" authorizing a city to enact franchise ordinances. The plaintiffs alleged that the ordinances enacted by the defendants constituted actionable, anticompetitive conduct as defined in ch. 542, F.S. The defendants responded that sections 316.002, 316.006, and 316.008, F.S., provide sufficient authority to enact the challenged franchise ordinances.

¹Case no. 95-941-CA-18 (FLA 16th Cir. Ct. Sept. 26, 2002)

The court ruled in favor of the defendants and held that the City of Key West was statutorily authorized to enact the franchise ordinances granting exclusive contracts for sightseeing tours within its jurisdiction. The court did not rule on whether or not the franchise ordinances were in violation of ch. 542, F.S.

This case is on appeal.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
